IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 361 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK KIRTIKAR SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 361 of 2002

MR AD SHAH for Petitioner No. 1-2

Ms Nandini Joshi, APP for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/11/02/2003

ORAL JUDGEMENT

RULE. Ms. Nandini Joshi, learned APP waives service of notice of rule for the State and Mr M R Shah, learned Addl.Central Government Standing Counsel waives service of notice of rule for respondents No.2 and 3. By consent of the learned Advocates for the parties, this matter is being heard and disposed of finally today.

2. The petitioners above named have preferred this Criminal Revision Application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging an order dated 9.8.2002 recorded by the learned Addl.Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No.114/89 under which the learned Magistrate directed that charge may be framed against the first accused (not before this court) as well as the present petitioners (who are respectively accused No. 2 and 3 before the trial court) for an offence punishable under section 5 of the Import and Export (Control) Act, 1947 (hereinafter referred to as 'the said Act') as well as for the offences punishable under sections 120 B, 471, 467, 420 read with section 34 of IPC.

2. The Dy.Chief Controller of Imports and Exports at Ahmedabad had filed the aforesaid criminal case against the said company (accused no.1 before the trial court as well as the present petitioners (accused no.2 and 3 respectively before the trial court) for the aforesaid offence before the learned Addl.Chief Judicial Magistrate at Bombay. There is no dispute that thereafter the said criminal case came to be transferred on the file of the learned Addl.Chief Judicial Magistrate at Ahmedabad. This being a warrantable private criminal complaint, the learned Magistrate recorded the evidence produced by the complainant in order to ascertain as to whether there are grounds to frame charge against the said company and the present petitioners. The learned Magistrate recorded the evidence of 16 witnesses and after hearing the learned Advocates for the parties, the learned Magistrate found that there was a ground for framing charge against the said company and the present petitioners and, therefore, charge was framed for the aforesaid offences on 9.8.2002.

3. Feeling aggrieved by the said order of the trial court, the two petitioners have preferred this revision application before this court. It has been mainly contended in this revision that there was no material before the trial court for framing charge against them and, therefore, the trial court has committed serious illegality in framing charge against them for the offences as aforesaid. That therefore, the order of the

trial court is illegal and perverse and deserves to be set aside. The petitioners have, therefore, prayed that the present revision application be allowed, the order of the trial court be set aside and the petitioners herein be ordered to be discharged from the aforesaid offence in respect of which the charge has been framed. On receipt of the revision application, notice was issued and subsequently rule was issued. In pursuance to the service of rule, Ms. Nandini Joshi, learned APP appears on behalf of the State and Mr M R Shah, learned Addl.Central Government Standing Counsel appears on behalf of the other respondents. I have heard the learned Advocates for the parties and perused the papers.

4. The case of the respondent department against the petitioners and the said company as stated in the complaint before the trial court may be briefly stated as follows:

That the said company had obtained a licence from the respondent department under the scheme framed by the respondent department. The said licence was applied for by the first petitioner herein for the import of Alkyl Benzene/Dodecyl Benzene under Duty Exemption Entitlement Scheme. That under the said scheme, the said company was permitted to import 1500 M.T. of Alkyl Benzene/Dodecyl Benzene and as per the terms and conditions of the licence, the said company was required to export finished goods of the said raw material out of India. It is the case of the respondent department that the said raw material was required to be used for manufacturing detergent washing powder and the said company was required to export the said detergent washing powder with a view to earn Foreign Exchange to the tune of Rs. 1.90 crores. It is also the case of the respondent department that the said Company had imported the said chemicals from a foreign country. However, instead of manufacturing detergent washing powder, the said company had sold away those chemicals in India and the finished product was not exported to a foreign country in accordance with the terms and conditions of the licence. That despite the said position, the said company and the two petitioners had submitted false periodical returns and certificates to the respondent department showing that the goods were processed and detergent washing powder was manufactured and it was exported to a foreign country in accordance with the terms and conditions of the licence issued in the name of the said company. That thereby the company as well as the present two petitioners have committed offence under section 5 of the said Act as also the offence punishable under IPC as

stated hereinabove. On the aforesaid set of facts, a complaint was filed at Bombay and thereafter, it came to be transferred on the file of learned Addl.Metropolitan Magistrate at Ahmedabad. As said above, the learned Magistrate recorded, the evidence and after hearing the learned Advocates for the parties, directed that charge as aforesaid may be framed against the company as well as against the two petitioners herein. There is no dispute with respect to the aforesaid set of facts. During the course of his argument, Mr A D Shah, learned Advocate for the petitioners has argued the matter at length stating that though the respondent department has examined as many as 16 witnesses, it has not been proved on record that the offence was committed by the present petitioners. It is also his argument that so far as the company is concerned, the department can certainly proceed against the company and not against the petitioners. It is also his argument that there is absolutely no evidence on record to show that the present petitioners had knowledge or information that the goods were not exported. That the process was not undertaken that, the raw materials were sold in India and that the finished goods were not exported to a foreign country in accordance with the terms and conditions of the licence issued in the name of the company. That therefore, when no evidence has been produced on record touching and involving the present petitioners, then in that event, the court could not frame charge against the petitioners.

5. In support of his argument, he has also stated that an offence under section 5 of the said act can be committed only by a licensee and not by any other person. It is also his argument that the licensee is the company and the petitioners are not licensees and therefore, no offence can be said to have been committed by the petitioners.

6. In support of the said arguments, he has relied upon a decision of the Apex Court in the case of Abdul Aziz v. State of Maharashtra, (AIR 1963 SC 1470). In para 15 of the said judgment, the Supreme Court has observed that for contravening the conditions of the licence, actual possession of the imported goods is not necessary. The Hon'ble Supreme Court has also observed that it is the possession of the Association by the licensee, which alone can contravene the condition of the licence.

7. In other words, the argument is that this offence can be committed only by a licensee and not by any other person. It is therefore, his argument that the licensee

is the company and the licence has been issued in the name of the company and therefore, only company will be responsible to answer the charge. That therefore, the petitioners not being the licensees, could not be charged for offence under section 5 of the said Act.

8. It is required to be considered here that two petitioners are shown as Chairman/Managing Director of the said company. It is not the case of the petitioners that they were not in charge of the affairs of the company. It is also not their case that they were not looking after the day today affairs of the company. When the petitioners are the Chairman and Managing Director of the said Company, an inference can reasonably be drawn that the petitioners were, in fact, dealing with the day-to-day affairs of the said company. It is more so, when it is not brought on record to show that the day-to-day affairs were entrusted to some other officers or other Directors of the company.

9. Even otherwise it is a matter of record that the company was required to send periodical returns and certificates to the respondent in order to show that the finished goods were actually exported in accordance with the terms and conditions of the licence granted in the name of the company. It is a matter of record that the said returns and certificates have been issued by the petitioner under their signatures. Record also shows that in fact no finished goods were exported but cattle like ships, goats and buffaloes were exported and material has been produced on record to show that such cattle have been exported by the said company. This shows that on the one hand in the name of finished goods live cattle were exported and there also signature of the second petitioner has been proved on record to show that the said export was made under his signature. This shows that the petitioners knew what they exported was the cattle and not finished goods.

10. Mr A D Shah, learned Advocate also argued that the petitioners simply sent certificates and returns and they did not know the contents thereof. It is after-all a defence which can be proved at the conclusion of the trial. When the petitioners being Sr.Directors of the company have signed the documents showing the export of cattle, when the documents signed by them also show that processed goods was shown to have been exported and when it has been proved on record, prima facie, that finished goods had actually not been exported by the said company, then in that case, there are reasons to believe that the processed goods was not exported in accordance with the

terms and conditions of the licence. It is also shown from the record that the petitioners had knowledge or at least reasons to believe that the finished goods were actually not exported by the said company.

11. Therefore, despite their knowledge or belief that the finished goods were not exported, the petitioners continued to submit returns and certificates to the respondent department that the finished goods were exported. This shows that they are parties in the commission of offence under section 5 of the Act, prima facie. Mr A D Shah, learned Advocate also argued that that some other persons were responsible for the misdeeds and they have simply obtained signatures of the petitioners. This will again be a subject matter of decision at the conclusion of the trial before the trial court. This is not a stage at which this court can grant benefit of reasonable doubt to the present petitioners.

12. So far as the import of goods of raw material is concerned, there is no serious dispute about the same. As regards export of the finished goods is concerned, it is also not much in dispute that the finished goods were not exported by the said company. It is also prima facie proved that the company had sent periodical returns and certificates under the signatures of the petitioners showing that the finished goods were exported in accordance with the terms and conditions of the licence. It again is a matter of record that no such finished goods were actually exported to a foreign country. This clearly shows that the company and the petitioners had joined hands in utilizing the said imported good in the country. It also prima facie establishes that the petitioners have submitted false certificates and returns to the respondent department. It goes without saying that in above view of the matter, prima facie, the petitioners are responsible to face the charge for an offence punishable under section 5 of the Act. In above view of the matter, it cannot be said that the petitioners had no notice or information or knowledge that the finished goods were not exported and that false certificates were sent by them to the respondent department.

13. Mr M R Shah, learned Addl.Standing Counsel appearing for the respondent department has referred to a decision in the case of Kanti Bhadra Shah v. State of W.B. (2000) 1 SCC 722. There the Supreme Court has observed that no reasons are required to be recorded when charges are to be framed. It has also been observed that reasoned order would be required only when the accused is

required to be discharged. It is also well settled that even if there is some doubt, then also the charge may be framed. This would show that benefit of reasonable doubt is not required to be given to the accused at the stage of framing of charge.

14. In above view of the matter and in view of the evidence on record, it cannot be said that there was no material before the trial court for framing charge against the petitioners. The trial court was also justified in drawing an inference that the petitioners being Chairman and Managing Director of the Company, accused no.1, had knowledge or had reasons to believe that the finished goods were not exported and yet false certificates and returns were submitted to the respondent department under their signatures. In that view of the matter, the trial court cannot be said to have been committed any error in framing charge against the petitioners and consequently, there is no reason to interfere with the impugned order of the trial court. Therefore, this revision application deserves to be dismissed. It is accordingly dismissed. Rule discharged.

10/11.2.2003 [D P Buch, J.]
msp